

Hon. Benjamin H. Settle

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**UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT TACOMA**

JOSEPH FANGSRUD VON ESCH, and
 RENNY FANGSRUD VON ESCH,

Plaintiffs,

v.

ASSET SYSTEMS, INC.,

Defendants.

NO. 3:16-cv-05842-BHS

**RESPONSE TO DEFENDANT'S
 MOTION TO LIFT STAY AND
 PLAINTIFFS' MOTION FOR LEAVE
 TO SUPPLEMENT PLAINTIFFS'
 RESPONSE TO DEFENDANT'S
 MOTION FOR FEES AND COSTS
 (ECF NO. 141)**

I. INTRODUCTION

Plaintiffs do not object to Defendant's motion to lift the stay of Defendant's motion for costs and fees. Plaintiffs simply request that this Court grant Plaintiffs leave to supplement their initial/preliminary response to Defendant's motion for costs and fees, and set a briefing schedule for the remaining briefing.

Facts and realities arose during the appeal that will influence this Court's opinion of Defendant's motion for costs and fees, including information contained in national and local amicus briefs, which this Court will find helpful and important in resolving the costs and fees issue. Therefore, Plaintiffs seek leave to supplement their initial response brief (ECF No. 141) to include these additional facts.

PLAINTIFFS' RESPONSE TO
 DEFENDANT'S MOTION TO LIFT STAY
 & PLAINTIFFS' MOTION TO
 SUPPLEMENT PLAINTIFF'S RESPONSE
 CASE NO. C16-05842-BHS

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II. STATEMENT OF THE CASE

Following a jury trial, the District Court dismissed this case as matter law. ECF No. 134. Defendant filed a motion for fees and costs. ECF Nos. 135 – 137. Plaintiffs appealed the ruling to the Ninth Circuit Court of Appeals. ECF No. 138. Plaintiff moved the District Court for a stay of Defendant’s motion for fees and costs pending appeal. ECF No. 140. Plaintiffs also filed a preliminary response to Defendant’s motion for costs and fees. ECF No. 141. The District Court granted Plaintiffs’ motion to stay Defendant’s motion for fees and costs. ECF No. 150.

On appeal, the Ninth Circuit Court of Appeals affirmed and remanded. ECF Nos. 152 – 155. Defendant then moved this Court to lift the stay regarding Defendant’s motion for fees and costs. ECF No. 156.

Plaintiffs did not oppose Defendant’s motion to lift the stay because the Court will undoubtedly lift the stay and address Defendant’s motion as a matter of course when this Court deems it appropriate. Despite the lack of a response brief, Defendant filed a reply brief. ECF No. 158.

Additional facts and realities were brought to light during the appeal, including the filing of national and local amicus briefs which contain additional facts and realities which will aid this Court’s review of Defendant’s motion for costs and fees.

Plaintiffs therefore seek leave to supplement or amend their initial/preliminary brief in response to Defendant’s motion for an award of costs and fees (ECF No. 141).

III. AUTHORITY

This Court has the inherent authority to control its own docket and case schedules. Plaintiffs have the right to respond to Defendant's motion for costs and fees. Local Rule 7(a)(2). This Court shall freely grant leave to amend pleadings. Fed. R. Civ. P. 15.

Justice and judicial economy will be best served by allowing Plaintiffs to update, supplement, or amend their brief in response to Defendant's motion for costs and fees (ECF No. 141), and through the issuance of a briefing schedule regarding future briefing.

IV. CONCLUSION

When/if this Court lifts the stay on Defendant's motion for costs and fees, this Court should also grant Plaintiffs leave to update, supplement, or amend their preliminary response brief, and issue a scheduling order regarding any remaining briefing.

DATED this 10th day of November, 2020 at Memphis, TN.

Respectfully submitted,

S/Robert Mitchell

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 10th day of November, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

DEFENDANT, Asset Systems, through their attorney: Jeffrey I. Hasson at hasson@dhlaw.biz; and

DATED this 10th day of November, 2020.

Respectfully submitted,

S/Robert Mitchell

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